

## DRAFT

A meeting of the New Hampshire Water Well Board was held on February 28, 2008 at 9:00 AM, in rooms 112 & 113, 29 Hazen Drive, Concord NH, 03302.

Present were: Bart Cushing, Chairman

Rene Pelletier, Secretary

Board Members: Jeffrey Tasker, Thomas Garside, David Wunsch and Peter Caswell

NHDES Staff: Richard Schofield and Allyson Gourley

Chairman Cushing brought the meeting to order at 9:07 AM and introduced the Board and staff members. Mr. Pelletier arrived at 9:10 AM and Mr. Garside entered the meeting at 9:11 AM.

**Approval of Minutes**

Upon motion by Chairman Cushing and seconded by Mr. Caswell, the Board unanimously voted to accept the minutes of the December 14, 2007 meeting, with the amendments to paragraph 3 on page 5.

**Old Business****Rules**

Mr. Schofield directed the Board's attention to the Rule Adoption Schedule which outlines a timeline for the rule adoption process. He pointed out that the deadline for filing of the Fiscal Impact Statement (FIS) is February 29, 2008. Mr. Schofield told the Board that he had met with the legal unit on February 27, 2008, to go over the suggested revisions. He explained that the majority of proposed revisions were for clarity purposes. Mr. Schofield told the Board that Peter Demas, attorney with the DES legal unit, was present at the meeting and available to go over the proposed changes. Mr. Schofield explained that it would be beneficial for the Board to address the proposed changes prior to approval of the rules. The Board agreed and asked Mr. Demas to take the chair.

He distributed copies of the proposed rules that included the changes recommended by the legal unit to the Board members. Mr. Demas reiterated that the changes were primarily for clarity, with the exception of one provision concerning a statutory authority issue. Mr. Demas proceeded to go over the proposed changes one at a time.

Chairman Cushing questioned We 302.03(d)(3) which allows maintenance and repair of existing well pumps systems to be performed by a licensed electrician. Mr. Demas responded to the question by stating that licensed electricians may conduct maintenance and repair to existing pump systems, but are not authorized to replace well pumps. Mr. Demas referred to We 302.03(b) which requires that replacement of a well pump be conducted by a licensed pump installer, as required by RSA 482-B:5. Mr. Schofield pointed out that changing the rule would require a statutory change because RSA 482-B:15 authorizes licensed electricians to perform repair and maintenance on existing pump systems.

Mr. Demas went on to discuss proposed rule We 302.04(d) and explain why it had been retracted. This is the case that he had alluded to earlier that would require a statutory change. The purpose of the addition to the rule was to allow “equivalent experience” to substitute for one years experience drilling

water wells in crystalline rocks of the Appalachian Region. Mr. Demas pointed out that the statute (RSA 482-B: 5, III) does not allow for the exception, therefore a statutory change would be required in order to grant the exception by rule. However, Mr. Demas explained that the statute does provide a waiver process that can be requested on a case-by-case basis.

Another proposed rule change which received considerable discussion involved We 602.05 sections (o) and (p). The rules apply to the construction of private wells on lots serviced by a public water system. Chairman Cushing asked if under these provisions someone would be prohibited from installing a geo-thermal well on a property if the setbacks could not be met. Mr. Schofield said that he has historically been of the opinion that if a well was to be used for irrigation or other non-potable uses, it did not fall under these regulations (RSA 485-A:29 and RSA 485-A:30-b). The discussion turned to “closed-loop” systems that are exclusively used for geo-thermal purposes. Chairman Cushing proposed that the wording be added to exclude closed loop systems from being prohibited on small lots with public water. He then asked DES staff member Brandon Kernan for his opinion on this issue. Mr. Kernan wondered if closed loop systems by nature of their construction, would fall out of jurisdiction of the Board. Mr. Wunsch made a motion to amend the rule by adding language excluding closed-loop well installations for geothermal purposes from the provisions of We 602.05(o). Mr. Pelletier seconded the motion and the Board voted unanimously to accept the motion.

There was discussion concerning the proposed wording change to We 602.06(i)(3); the word “practicable” had been removed by the legal unit based on expected objections from the Office of Legislative Services (OLS). Following an explanation from Chairman Cushing, Mr. Demas said he felt he could get OLS approval to leave the term “practicable”.

After Mr. Demas completed his explanation of the legal unit’s revisions to the proposed rules, Mr. Schofield discussed his recommended changes.

Following review of the amendments recommended by Mr. Schofield, some minor language changes were agreed upon by the Board. Mr. Schofield also discussed various sections of the “Request of Fiscal Impact Statement”.

Chairman Cushing asked that the Board vote on the amended rules. Upon motion by Mr. Wunsch and seconded by Mr. Garside, the Board unanimously voted to accept the proposed rules as amended.

### **Previous Complaints**

#### **Sandra and Stephen Surico / Mainline Well & Pump Services**

Mr. Schofield reported on the complaint that was heard at the last meeting. The parties involved and the Board had reached agreement at that time. Mr. Schofield presented documents provided by the Surico’s outlining the terms of the agreement. Mainline Well & Pump Services agreed to waive the remaining balance of \$3,410., and Wragg Brothers Well Drilling has agreed to hydro-frac the Surico’s existing well this spring at no charge. In return, the Surico’s agreed to sign a nonconforming well location form and standard release form.

Mr. Schofield shared comments made to him by the Surico’s. They thanked the Board for their assistance and suggested that towns have the Water Well Board listed on their websites or posted at the Town Hall to raise public awareness of the Board’s existence.

The matter was closed by the Board.

**New Complaints****Town of Windham / Contoocook Artesian Well Co.**

Chairman Cushing received a request from Mr. Patenaude of Contoocook Well Co. asking that the matter be postponed until the next meeting. Mr. Schofield said he received a letter from Alfred Turner with the Town of Windham, also asking that the matter be postponed.

Mr. Pelletier questioned whether the Board should even consider the complaint because in his opinion the matter is primarily a wetlands issue and not under the Board's jurisdiction.

Following some discussion, Chairman Cushing asked the Board if all agreed that this matter does not appear to be in jurisdiction; the Board agreed. Mr. Schofield said that he will send a letter to Mr. Turner informing him of the Board's decision.

**Reporting****Incomplete Reports (Sent Back)**

Mr. Schofield reported on the status of Incomplete Reports (Sent Back) and Backlog Reports. First to be discussed were the Incomplete Reports. Derry Well Company had 20 reports returned to them as incomplete, of that 20 they have only returned 1 complete report to DES. Faxon Well Company had 4 reports returned as incomplete and have not returned any back to DES. Judd Goodwin Company had 21 reports returned, one to date has been resubmitted to DES.

Mr. Schofield went into some detail regarding the circumstances with Mr. Goodwin. He told the Board that he has been working with Mr. Goodwin to come into compliance with a large number of backlog reports. Mr. Goodwin has submitted 200 corrected backlog reports to DES. Chairman Cushing asked at what point we would consider issuing a fine. Mr. Schofield explained that he did not feel a fine would be appropriate in this case since efforts were being made to correct the situation.

Chairman Cushing expressed frustration regarding the lenience offered by DES to allow companies to come into compliance, when the rest of the industry is following the requirements. Mr. Pelletier also commented on this issue, pointing out the amount of

time and effort DES staff spends on non-compliers. He urged the Board to establish a threshold at which enforcement action would be initiated, and suggested that the enforcement process be stepped-up by going straight to an LOD rather than sending a second warning letter.

Mr. Schofield reported that 73% of incomplete reports had been returned to DES and 81% of backlog reports (not including Goodwin Well Co.) had been returned. This compares with 51% for backlog

reports as of the last meeting. He concluded by stating that we are making progress and less reports need to be sent back.

### **Licensing**

#### **New Applicants**

The Board reviewed two license applications and a third application that had been denied by Mr. Mackey.

The first application considered was requested by Richard Huppe. Mr. Mackey explained that he currently holds a pump installers license under his own company, Anything Water. Mr. Huppe has applied for a second license with McBride Water Advantage. Chairman Cushing questioned why a second license was needed. Mr. Mackey explained that licenses are issued to a company, not to an individual. Mr. Huppe took the chair and answered questions from the Board.

The Board voted unanimously to issue a second license to Richard Huppe under McBride Water Advantage.

The second application was for a special hydro-fracturing license, requested by Sean Kyle of Northeast Water Products Inc. There was some discussion regarding Mr. Kyle hydro-fracturing wells without a license in the past.

The Board voted unanimously to allow Mr. Kyle to sit for the exam.

Mr. Mackey presented another application to the Board which he had rejected because the applicant used himself as one of the references.

Following a short discussion, Mr. Garside made a motion to accept Mr. Mackey's original decision on the matter. The motion was seconded by Mr. Tasker.

The Board voted unanimously to uphold the decision to deny the application.

#### Administrative Fines

Chairman Cushing asked the Board whether someone with an outstanding fine against them should be granted a license.

Mr. Pelletier responded by saying that he felt it was a straight forward issue. In his opinion, anyone with a fine against them should have to come into compliance before being granted a license.

Mr. Schofield reported on the case of Hartley Industries involving an outstanding fine. The company has been sold and the original owner, William Hartley, is believed to have moved to California. The original fine was \$6,889.00, of which \$1,200.00 is still outstanding. Mr. Schofield said he did not think DES will be successful in collecting the remainder of the fine. DES does not have a forwarding address for Mr. Hartley. He reported that the legal unit has sent him 3 demand letters to date.

Chairman Cushing questioned whether DES could still pursue the remainder of the fine with the company if they were still doing business as (DBA) Hartley Industries. Mr. Schofield did not think that would be possible because he thought the fine had been specifically levied against Mr. Hartley. Additionally, he had talked with the new owner's attorneys who informed him that the new owner of the company was not liable for any outstanding debts or obligations.

Mr. Schofield discussed the Board's ability to "*conditionally suspend a license, subject to payment*" as allowed under RSA 482-B:8.

Mr. Pelletier suggested that the Board deny license renewal to anyone with an outstanding judgment against them. Mr. Schofield specified that this could be done in cases involving an Administrative Fine (AF) or Administrative Order (AO), but he did not think this could be applied to Letters of Deficiency (LOD's).

Chairman Cushing asked the Board if everyone agreed that this policy should be adopted; all agreed.

Mr. Pelletier made a motion that the Board send a letter to Mr. Hartley informing him that his licenses are conditionally suspended, subject to payment of the outstanding fine. The letter would include a 30-day period for him to request a hearing. Mr. Wunsch seconded the motion.

The Board unanimously accepted the motion.

Recess for lunch at 12:05 pm.

Meeting reconvened at 12:49 pm.

### **New Business**

#### **Probation Status Report**

Mr. Schofield reported on Luke Fowler of Fowler Well Co.. He had been placed on probation for failure to supply well location reports. The probationary period was scheduled to end on 3/10/08. The Board decided to send him a letter informing him that his probation was over.

#### **Non-Conforming Locations**

Mr. Schofield reported that he had received a complaint from a well contractor stating that some of his competitors were not filing non-conforming well reports, and not grouting and adding extra casing as required. He wanted to make anonymous complaints.

Mr. Pelletier stated that DES does not accept anonymous complaints.

#### **Abandonment of Wells in Conjunction with Replacement Septic Systems**

To illustrate this problem, Mr. Schofield presented information regarding a recent situation where a replacement septic system had been approved by DES. The approved plan showed an existing well located within the fill extensions of the new septic system. Although the plan specifies that the well be decommissioned by a licensed water well contractor, the Construction Approval issued by DES does not mention the existing well.

Mr. Schofield expressed his concern that DES has not been tracking these types of situations. He told the Board that he has discussed this with Mr. Pelletier and the NHDES Subsurface Bureau. The Subsurface Bureau has agreed to hold the Operational Approval until they receive a copy of the decommissioned well report.

Chairman Cushing spoke regarding the specific situation that Mr. Schofield had presented to the Board. He explained that he lives near the property. One day he observed that a new well and septic system had been installed. When he inquired about the work, he learned that a well report had not been filed. Subsequently, Mr. Schofield contacted the contractor who installed the well and requested that he submit a report, which he did.

Chairman Cushing questioned the information provided on the well report. The original Well Completion Report, dated 9/26/97, showed the well to be 200' deep and overflowing at the time of installation. The Abandoned Well Registration Report, dated 10/10/07, showed the well to be 300' deep.

The licensed well installer who conducted the work, Chris Parker, was present at the meeting. The Board invited Mr. Parker to take the chair.

Mr. Pelletier asked Mr. Parker if he physically decommissioned the well. Mr. Parker responded that he observed the entire process. Mr. Pelletier asked about the discrepancy in the reported well depths. Mr. Parker explained that he obtained the information about the existing well on-line. He thinks that he may have pulled up data for the wrong address. Mr. Parker continued to describe the events. He said that he always orders more bentonite than he thinks he will need, and just continues to fill the well until it is full. He explained how he shoveled through the fill extension and placed a coal shoot on the pipe in order to fill it. He said the well was not overflowing at the time the work was conducted. Mr. Parker said it was his understanding that the pump from the existing well had been installed into the new well, although he did not personally observe that work being done.

The matter was closed by the Board.



There was discussion regarding the appropriate action to take against Mr. Gosselin. Mr. Gosselin installed the well cover on the new well (in the case discussed previously). The well cover did not meet code, and Mr. Gosselin did not hold a Pump Installers license at the time the work was done. Mr. Schofield said that Denny Amer had told him that Mr. Gosselin had installed the pump. Mr. Pelletier asked if he would be willing to put that information in writing. Mr. Schofield said that he would pursue that possibility. It was decided that a Cease and Desist Order be issued to Mr. Gosselin, and then the appropriate enforcement action should be determined.

Mr. Schofield reported on two items that he wanted to bring to the attention of the Board. One was an article about a geothermal company that recently purchased a NH well drilling company. The other item was a national study by USGS reporting on the microbiological quality of groundwater throughout the United States.

The meeting was adjourned at 1:40 pm.